

Seesay v. Holder, No. 07-75035

OCT 14 2009

IKUTA, Circuit Judge, dissenting:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

This court has no jurisdiction to review timeliness findings based on disputed facts. *Cf. Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007). Unlike in *Hakopian v. Mukasey*, 551 F.3d 843, 846 (9th Cir. 2008) and *Cinapian v. Holder*, 567 F.3d 1067, 1073 (9th Cir. 2009), the alien here testified to dates contrary to that alleged in the government's Notice to Appear. At his hearing, Seesay made a number of inconsistent statements regarding his date of arrival into the United States, casting the date into dispute. In light of this conflicting evidence, the arrival date cannot be considered judicially admitted, and the majority's reliance on *Hakopian* and *Cinapian* is misplaced. Because this timeliness finding was based on disputed facts, we lack jurisdiction to consider this asylum claim. I would dismiss the asylum claim on this basis. I otherwise concur in the majority's disposition of Seesay's withholding and CAT claim.